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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

February 4, 2000

AO-00-01

Robert D. Whynott, City Clerk
City Hall
9 Dale Avenue
Gloucester, MA 01930

Re: Selection of City Councillor

Dear Mr. Whynott:

This letter is in response to your request for an opinion regarding the selection of a city councillor to replace a city councillor who passed away.

You have stated that Gloucester's Ward 3 Councillor, Carleton Grace, passed away shortly after being elected last November. It is my understanding that Councillor Grace was the only candidate on the ballot for Ward 3. Gloucester's Charter provides for the city council to select Councillor Grace's replacement. Many of Gloucester's residents, however, would like the new councillor to be elected rather than appointed. As a result, a compromise has been proposed.

Under the compromise, a "preference poll" will be conducted on February 28, 2000. On the 28th, the City's old ballot boxes and paper ballots will be used. People interested in running in the preference poll will take out "qualification papers," which are similar to nomination papers. For a person's name to appear on the preference poll ballot, his or her qualification papers must be signed by 75 voters. It is my understanding that the Gloucester City Council (the "Council") will declare its "intention of selecting the people's choice" as expressed in the preference poll.

You have asked whether the campaign finance law¹ would apply to the preference poll and, if so, in what manner.

¹ I understand that you have reviewed this proposal with the Secretary of the Commonwealth's Elections Division and Gloucester's City Solicitor. For the purposes of this opinion, I assume that the proposal is not prohibited by the election laws generally, Gloucester's charter or any other general or special law.

Questions and Answers

(1) Do the campaign finance law's disclosure rules apply to the proposed preference poll?

Answer: No.

(2) If the campaign finance law's disclosure rules do not apply, does the campaign finance law prohibit the Council from requiring individuals, who qualify for the preference poll, to file disclosure reports similar or identical to the disclosure reports required by the campaign finance law.

Answer: No.

Discussion

The Gloucester City Charter (the "Charter") sets forth the procedure that must be followed to fill a vacancy for ward councillors. Specifically, the Charter provides, in part, as follows:

If a vacancy in the office of ward councillor shall occur . . . the city council shall, within the thirty (30) days following the date on which the vacancy is declared to exist, elect a suitable person from among the voters residing in the ward to serve for the balance of the unexpired term.

By its terms, the charter places the responsibility for "elect[ing] a suitable person . . . to serve for the balance" of Councillor Grace's term *on the Council*. The disclosure requirements of the campaign finance law, M.G.L. c. 55, however, apply only to a "candidate," i.e. an "individual who seeks . . . *election* to public office . . ." By definition, elections are decided by "*choice by the voters.*" See M.G.L. c. 50, s. 1 and c. 55, s. 1.

The preference poll will be conducted pursuant to an order passed by the Council. Even assuming that the Council declares its "intention of selecting the people's choice" as expressed in the preference poll, it is the Council and not the voters that will ultimately determine who serves. In short, the preference poll is not an election within the meaning of M.G.L. c. 55. Persons seeking to serve for the balance of Councillor Grace's term by running in the preference poll, therefore, are not "candidates" for purposes of the campaign finance law and the law's disclosure requirements would not apply to them.

Nothing in the campaign finance law, however, would prohibit the Council from including provisions in its proposal that would require such persons to file disclosure reports similar to chapter 55's disclosure reports.

You should be aware, however, that certain provisions of the campaign finance law may apply to persons participating in the preference poll. See M.G.L. c. 55, ss. 13 through 17 and OCPF's *Campaign Finance Guide: Public Employees, Public Resources and Political Activities*, which is enclosed for your information. For example, section 13 prohibits solicitation for "any political purpose

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whatever” by public employees and section 14 prohibits any person from soliciting in a public building for such purpose. Although the preference poll is not an election, running in the poll is a “political purpose.” Therefore, we would advise that the limitations and restrictions of these sections of the law be observed.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and related information forwarded to this office and in your conversation with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director